

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
OSEN LLC,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF STATE,

Defendant.
-----X

:
:
:
:
:
:
:
:
:
:

Case No. 18-cv-6070

COMPLAINT

NATURE OF THE ACTION

1. Osen LLC brings this action against defendant United States Department of State (“State”) to vindicate its right under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain certain government records relating to terrorist attacks that occurred in Iraq between 2004 and 2011.

2. Osen LLC represents hundreds of U.S. service members and family members of U.S. service members (the “Clients”) killed or injured in terrorist attacks while serving in Iraq (the “Attacks”). Osen LLC alleges that these attacks were committed by Iranian-backed terrorists, and that Iran and its corporate enablers are responsible for its Clients’ injuries. Osen LLC has brought several lawsuits on behalf of its Clients against Iran and several Iranian and Western financial institutions that it alleges helped Iran fund, train, and otherwise support the terrorists who injured Osen LLC’s Clients.

3. In each of these cases, the Clients must show that Iran was responsible for the attacks in which they were injured. To do so, the Clients will rely on a number of government records, including records specifically relating to each attack and records generally relating to Iran’s support for terrorist groups in Iraq.

4. To make these showings, Osen LLC requests FOIA records from government agencies, including from State, which maintains records relating to the United States' diplomatic and security interests globally, including those relating to Iran and Iraq during the relevant time period.

5. However, State has failed to release documents to Osen LLC in accordance with its statutory obligations under FOIA.

6. Specifically, Osen LLC has made two sets of FOIA requests (the "Requests") on State. State has yet to make any determinations as to which records from the Requests it will produce and which it will withhold and the grounds therefor, passing the statutory 20-day limit for doing so.

7. In fact, State has given no substantive response to Plaintiff's first set of Requests, which it filed over six months ago on December 28, 2017, and no response *at all* to Plaintiff's second set of Requests, made on June 6, 2018.

8. Further, Osen LLC's Clients have a trial set for December 3-5, 2018 in federal court in the District of Columbia against the Islamic Republic of Iran. As a result, Osen LLC cannot afford to waste more time waiting for State to fulfill its statutory duties.

JURISDICTION AND VENUE

9. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. § 1331.

10. Because State failed to provide any determination as to the Requests, Osen LLC "may bring suit directly in federal district court without exhausting administrative appeal remedies." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 182 (D.C. Cir. 2013).

11. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

12. Plaintiff Osen LLC is a law firm that primarily represents victims of international terrorism. Osen LLC has offices in Hackensack, New Jersey and New York, New York.

13. Defendant United States Department of State is an executive department and agency within the meaning of 5 U.S.C. § 551(f)(1).

BACKGROUND

14. Osen LLC represents hundreds of American servicemembers and family members of American servicemembers who were killed or injured in alleged terrorist attacks while serving in Iraq. Each of these attacks was allegedly committed by terrorists who received material support from the Islamic Republic of Iran.

15. Through its state terror apparatus, the Islamic Revolutionary Guard Corps (“IRGC”), and its terror proxy, Hezbollah, Iran has cultivated, armed, trained, directed, and supported several Shi’a terrorist groups in Iraq, called “Special Groups” by the U.S. military. Following the May 1, 2003 end of major combat operations in Iraq and the commencement of U.S. peacekeeping operations in Iraq under United Nations mandate, Iran increased its support for these Special Groups to facilitate their attacks against U.S. and other allied forces.

16. Osen LLC has brought suits on behalf of these terror victims against Iran (*Karcher v. Islamic Republic of Iran*, No. 16-cv-232 (CKK) (D.D.C.) (trial scheduled December 3-5, 2018, as referenced above), *Stearns v. Islamic Republic of Iran*, No. 17-cv-131 (RCL) (D.D.C.)), several Iranian banks that allegedly transferred Iranian funds benefitting terrorist groups (*Hake v. Bank Markazi Jomhouri Islami Iran*, No. 17-cv-114 (TJK) (D.D.C.), *Brooks v. Bank Markazi Jomhouri Islami Iran*, No. 17-cv-737 (TJK) (D.D.C.)), *Field v. Bank Markazi Jomhouri Islami Iran*, No. 17-

cv-2126 (TJK) (D.D.C.), and several Western banks that allegedly conspired with Iran to transfer dollar-denominated assets benefiting these terrorist groups (*Freeman v. HSBC Holdings plc*, 14-cv-6601 (DLI)(CLP) (E.D.N.Y.)).

17. In each of these suits, Osen LLC must prove that Iran is responsible for the attacks in which its Clients were injured. The first step in doing so is establishing Iran's role in sponsoring Special Group attacks on U.S. forces.

18. Government records maintained by State can potentially establish Iran's role in providing material support for the Attacks. Principle among them are diplomatic cables drafted and sent by State staff from the U.S. embassies in the region (particularly the embassy in Baghdad, but also the State offices in Basrah, Iraq, and Damascus, Syria). As made evident by their titles, these cables discuss Iran's influence in Iraq, and in particular Iran's support for acts of terrorism.

19. For instance, cable titles include, "Foreign Minister: Iran Will Escalate Confrontation with U.S. in Iraq" and "Iran Managing the Post-Basrah Backlash" (Basrah is a region of Iraq near its border with Iran that was a hotbed for Iranian-backed terrorist attacks on U.S. and U.K. forces).

20. Other documents include letters and reports authored by State staff.

21. Osen LLC only requested particular records that are generally known to exist. Each record was cited in a major book on the Iraq conflict: Michael R. Gordon and Gen. Bernard E. Trainor, *The Endgame: The Inside story of the Struggle for Iraq, from George W. Bush to Barack Obama* (Vintage 2013). Further, copies of most of these records may be quickly and easily located on the WikiLeaks website, although these are arguably not self-authenticating.¹

¹ However, because most of these records were classified over 10 years ago, they were automatically declassified by operation of Executive Order 13,526 § 1.5 (requiring a declassification date for records marked SECRET or below, which includes each of the requested records, at no later than 10 years after their original classification) and 32 C.F.R. § 2001.1(b) (providing that if a declassification date is not extended by the time the 10

22. On December 27, 2017, Osen LLC submitted its first set of Requests, requesting six cables from the U.S. embassy in Baghdad, via State's FOIA request submission website (<https://foia.state.gov/Request/Submit.aspx>). After submitting the Request, Osen LLC received an automated e-mail from State, providing the text of the Request. *See* Exhibit A.

23. On January 17, 2018, State sent Osen LLC a type-written form letter, with blanks filled in by hand, identifying the date and subject matter of the Request, and assigning it a case number. *See* Exhibit B. The letter did not make any determinations as to the scope of the documents it will produce or the exemptions it will claim with respect to any withheld documents, or any reasons therefor. *See* Exhibit B.

24. Osen LLC received no further communications relating to that Request.

25. On June 6, 2018, Osen LLC sent its second set of Requests to State via the same website, requesting 36 records, including embassy cables, a letter, and a report. After submitting the Request, Osen LLC again received an automated e-mail from State, providing the text of the Request. *See* Exhibit C.

26. Although more than 20 days have passed since it submitted the second Request, Osen LLC has received no acknowledgment from State whatsoever, much less a determination as to which documents it will produce or withhold.

27. In fact, Osen LLC has received no further communications from State whatsoever.

years has passed, "the information is *automatically declassified* upon the occurrence of the date or event.") (emphasis added).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(For a Declaration that Osen LLC is Entitled to the Records Sought in Its Two Sets of Requests)

28. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

29. Upon information and belief, the records sought in Osen LLC's two set of Requests are in the possession, custody and/or control of State.

30. Upon information and belief, the records sought in Osen LLC's two sets of Requests are not subject to complete withholding under any of the exemptions from public disclosure set forth in 5 U.S.C. § 552(b), nor has State identified any such exemption or any such affected documents.

31. Therefore, State's failure to send Osen LLC copies of the records requested in its two sets of Requests violates Osen LLC's rights under 5 U.S.C. § 552.

32. Because State has not made the necessary determinations as to Osen LLC's Requests as required under 5 U.S.C. § 552, Osen LLC's claims present an actual controversy within this Court's jurisdiction.

33. Osen LLC is thus entitled to a declaration that State is obligated to provide it with copies of the records sought in Osen LLC's two sets of Requests.

SECOND CLAIM FOR RELIEF

(For an Injunction Compelling State to Comply with Osen LLC's Two Sets of Requests)

34. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

35. As a result of the foregoing, Osen LLC is entitled to an injunction compelling State to provide Osen LLC with copies of the records sought in its two sets of Requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Accept jurisdiction over this action;
- b. Declare that Osen LLC is entitled to copies of the records sought in its Requests;
- c. Issue an injunction compelling State to collect and give Osen LLC copies of the records requested in its two sets of Requests;
- d. Award Osen LLC reasonable attorney fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E)(i)-(ii); and
- e. Grant other such and further relief as the Court deems just and proper.

Dated: New York, New York
July 3, 2018

OSEN LLC

By /s/ Michael J. Radine
Michael J. Radine
William A. Friedman
1441 Broadway, Suite 6022
New York, New York 10018
Phone: (212) 354-0111
Fax: (201) 265-0303

Attorneys for Plaintiff